



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCO/153167

PRELIMINARY RECITALS

Pursuant to a petition filed October 30, 2013, under Wis. Admin. Code § HA 3.03, to review a decision by the Milwaukee Early Care Administration - MECA in regard to Child Care, a hearing was held on December 17, 2013, at Milwaukee, Wisconsin. The record was held open at the Petitioner's request to submit additional information by January 7, 2013. No information was submitted by the Petitioner. The record closed on January 7, 2013.

The issue for determination is whether the agency properly seeks to recover an overissuance of child care benefits in the amount of \$2,654.65 for the period of August 19, 2012 – December 31, 2012 and \$1,843.76 for the period of January 1, 2013 – July 31, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Attorney Joseph McCleer

Milwaukee Early Care Administration - MECA
Department of Children And Families
1220 W. Vliet St. 2nd Floor, 200 East
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. In February, 2012, Petitioner's child was born. The father is JE. On April 24, 2012, the agency completed a child care authorization for Petitioner's child for 25 hours/week from April 29, 2012 – August 4, 2012.
3. On or about August 1, 2012, the Petitioner moved to [REDACTED], [REDACTED].
4. On or about July 27, 2012, the Petitioner submitted a Six Month Report Form (SMRF) to the agency. JE was not included in the Petitioner's household.
5. On August 2, 2012, JE submitted an application to the agency for FS benefits. He reported his address as [REDACTED], [REDACTED], [REDACTED]. He reported no other persons in the household.
6. On August 7, 2012, the agency received pay statements for the Petitioner from [REDACTED]. On August 10, 2012, the agency received a verification indicating that the Petitioner works 20 – 25 hours/week.
7. On August 7, 2012, the agency approved child care authorizations for 39 hours/week for the period of August 5, 2012 – February 2, 2013.
8. On August 17, 2012, the agency received information from the child support agency that JE and the Petitioner reported to family court on August 16, 2012 that they are currently residing together and have been residing together for 2 years. The child support agency also reported that JE stated he has not been working for one year.
9. On August 28, 2012, the Petitioner signed an Affidavit of Nonresidence attesting that JE does not reside with her and that he has never resided with her. She reported that JE lives at [REDACTED], [REDACTED]. This information was provided to the agency on August 30, 2012.
10. On September 11, 2012, the Petitioner signed a summary of her case status affirming that JE is an "absent parent" and does not reside in her household.
11. On September 25, 2012, Petitioner's employment with [REDACTED] ended. On or about October 26, 2012, the Petitioner started working at Consult Sales. On or about November 9, 2012, her employment with Consult Sales ended.
12. On November 6, 2012, JE registered to vote, reporting his address as [REDACTED], [REDACTED].
13. On January 5, 2013, JE began working at [REDACTED] Group.
14. On January 16, 2013, the Petitioner reported that her employment at [REDACTED] ended and she started working at [REDACTED] on January 7, 2013. On January 23, 2013, Petitioner submitted a pay statement from [REDACTED] to the agency.
15. On January 14, 2013, the Petitioner received an unemployment compensation payment of \$190. On March 26, 2013, the Petitioner started receiving UC benefits of \$190/week until April 15, 2013.
16. On February 6, 2013, the Petitioner completed a review. The only change reported was an increase in rent to \$670/month. The Petitioner reported her employment with [REDACTED] and Consult Sales. On February 13, 2013, the Petitioner signed a summary of her case status affirming that JE is not in the household.
17. On April 4, 2013, JE's employer [REDACTED] Group provided verification that JE reported his residence at [REDACTED]. The employer also verified JE's wages for the period of December 29, 2012 – April 4, 2013.

18. On April 11, 2013, Petitioner contacted the agency to end her child care authorization. Petitioner reported she is no longer employed at [REDACTED]. The authorization was ended effective March 30, 2013.
19. On April 12, 2013, Petitioner contacted the agency to report that her child had attended child care after March 30, 2013 even though she was not working or in any other approved activity.
20. On April 17, 2013, Petitioner reported to the agency that her last day at [REDACTED] was February 26, 2013.
21. On May 6, 2013, the Petitioner started receiving unemployment compensation benefits of \$142/week. She continued to receive UC benefits until June 24, 2013.
22. Petitioner started working for [REDACTED] Ltd on June 3, 2013. She worked 40 hours/week at \$10.50/hour. Her work schedule was M-F, 8:30 a.m. – 5:30 p.m. On May 30, 2013, Petitioner requested child care benefits. On June 13, 2013, the agency authorized child care benefits of 45 hours/week.
23. On July 8, 2013, the Petitioner submitted a SMRF to the agency. No changes in household composition were reported. The Petitioner reported she is no longer receiving unemployment compensation benefits effective June 24, 2013.
24. On September 25, 2013, an employment verification for JE from [REDACTED] was submitted to the agency. The verification indicates JE's start date as March 27, 2013, his address as [REDACTED], [REDACTED]. It verifies his work hours as M-F, 2:30 p.m. – 10:30 p.m. and his wages as \$12.05/hour. The employer also provided JE's actual wages for January – June, 2013.
25. On October 13, 2013, the Petitioner's landlord provided a verification that the only household member at [REDACTED] was the Petitioner from August 1, 2010 – July 31, 2013. On October 24, 2013, the Petitioner's landlord provided a written statement to the agency that the Petitioner was the only person on the lease at [REDACTED] and that the Petitioner paid the rent of \$670 herself. The statement also indicates that the Petitioner had a "boyfriend who was only there periodically but not a resident."
26. On October 16, 2013, the agency issued Child Care (CC) Client Overpayment Notices to the Petitioner informing her that the agency intends to recover an overissuance of child care benefits in the amount of \$2,654.85 for the period of August 19, 2012 – December 31, 2012 and \$2,611.76 for the period of January 1, 2013 – August 31, 2013. On November 6, 2013, the agency issued a revised CC Client Overpayment Notice to the Petitioner informing her that the agency adjusted the overpayment to seek recovery of \$1,843.76 for the period of January 1, 2013 – July 31, 2013. There was no adjustment for the overissuance for the period of August 19, 2012 – December 31, 2012.
27. On October 30, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

Wis. Stat., §49.195(3), provides as follows:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in Wis. Stat., §49.155, and thus they are within the parameters of §49.195(3). Recovery of child care overpayments also is mandated in the Wis. Admin. Code §DCF 12.23. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment. Wis. Admin. Code §DCF 12.23(1)(g). Recovery must occur even if the error was made by the agency.

A parent(s) is eligible for child care services if it is needed while the parents attend W-2 approved school, work, or participate in W-2 activities. Wis. Stat., §49.155(1m)(a). The agency shall recover child care payments if the authorized payments would have been less because the parent(s) was absent from an approved activity while the child was in care. Child Day Care Manual, Chapter 2, §2.3.1.

The agency contends that the Petitioner and JE resided together during the overpayment periods. The agency presented sufficient information to demonstrate that the Petitioner and JE were residing together during the overpayment periods. The Petitioner testified that JE used her address as a mailing address and he lived with her periodically but he did not permanently reside with her. The Petitioner presented no other evidence to support her claim. The agency presented JE's voter registration, child support records, a transcript of the paternity proceeding and employment records. The agency demonstrated that the Petitioner has provided inconsistent reports to the agency and to the courts with regard to JE's residence. I conclude that the Petitioner's testimony is not credible. The overwhelming weight of the evidence demonstrates that the Petitioner and JE were residing together during the relevant periods.

With regard to the determination of an overpayment, the agency presented evidence to demonstrate that JE was not employed or otherwise engaged in an approved activity in 2012. Therefore, the Petitioner was not entitled to child care benefits for the overpayment period of August 19, 2012 – December 31, 2012 and the agency properly seeks to recover an overissuance of \$2,654.65 for that period. I note that the agency also demonstrated that the Petitioner was not in an approved activity from September 30, 2012 – October 31, 2012 and from November 11, 2012 – December 31, 2012 and would not have been entitled to benefits during those periods even if JE was not residing with her.

For the overpayment period of January 1, 2013 – July 31, 2013, the agency does not seek to recover any benefits for January and February, 2013 as both the Petitioner and JE were employed during that period. The Petitioner's employment with [REDACTED] ended on or about March 2, 2013. The Petitioner continued to send her child to child care after her employment ended. On April 11, 2013, the Petitioner contacted the agency to have her authorization discontinued. It was discontinued for April and May, 2013. The agency properly seeks to recover an overissuance of benefits for March, 2013 because the Petitioner was not engaged in an approved activity.

For June and July, 2013, the Petitioner and JE were employed. However, their monthly household income of \$3,680 exceeded the gross income limit of \$3,182 for a household of three so they were not entitled to child care benefits for those months. Thus, the agency properly seeks to recover child care benefits issued for June and July, 2013.

I have reviewed the agency's overissuance worksheets and benefit issuance history. Based on all of the evidence, I conclude that the agency properly seeks to recover an overissuance of child care benefits in the amount of \$2,654.65 for the period of August 19, 2012 – December 31, 2012 and \$1,843.76 for the period of January 1, 2013 – July 31, 2013.

CONCLUSIONS OF LAW

The agency properly seeks to recover an overissuance of child care benefits in the amount of \$2,654.65 for the period of August 19, 2012 – December 31, 2012 and \$1,843.76 for the period of January 1, 2013 – July 31, 2013.

THEREFORE, it is

ORDERED

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

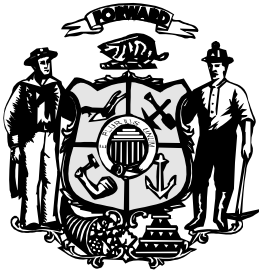
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 17th day of February, 2014

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 17, 2014.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit
Child Care Fraud
Attorney Joseph McCleer